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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/674,726	07/02/1996	SCOTT A. MOSKOWITZ	2377/11 [80410.0017]	8703

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EXAMINER

BLOUNT, STEVEN

ART UNIT	PAPER NUMBER
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2616

DATE MAILED: 12/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 08/674,726	<b>Applicant(s)</b> MOSKOWITZ, SCOTT A.	
	<b>Examiner</b> Steven Blount	<b>Art Unit</b> 2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 05 October 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 3 - 6, 16 - 22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3 - 5, 16 - 20 is/are rejected.
- 7) ☐ Claim(s) 6, 21 - 22 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Claim Objections***

1. Claims 3 and 4 and 6 are objected to because of the following informalities: given the importance of the "bandwidth securitization instrument" in the claim, the examiner believes it should be positively recited in the body of the claim and not only in the preamble. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 3, 4, 5, 16, 18 are rejected under 35 USC 102(e) as being anticipated by U.S. patent 5,640,569 to Miller et al.

With regard to claim 3, Miller et al teaches dividing bandwidth supplied by servers As and CS (col 5 lines 9+) amongst competing parties, wherein a securitization instrument 142 (col 4 lines 40+) is used to represent the bandwidth resource based on current auction values, where a value (bid and its associated "bid slate" – see fig. 3) is received from the units desiring bandwidth, said bid received at computer associated with memory 124 (IE, the auctioneer). Value is assigned to the security instrument, said instrument used in exchanging data between the servers and the bidders via the auctioneer (ie, exchange) 124, wherein said value is determined based on the values

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provided by competing users. See also col 6 lines 42+, col 7 lines 18+, col 4 lines 65+.

With regard to claim 4, see the above, and note that the first party is the video user, and the second party is the server(s) wherein in this instance the bandwidth securitization (as defined by applicant on page 56 line 18 – “bandwidth right”) is transferred between the exchange 124 and the server so that the server can be instructed to transfer the bandwidth to the user.

With regard to claim 5, see the discussion above and note that the “estimating a demand” value is the value of the auction based upon its current “spot market value” determined based on the other bidders.

With regard to claim 16, the first party is a server.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 17, 19, 20 are rejected under 35 USC 103(a) as being obvious over U.S. patent 5640569 to Miller et al as applied above to claims 3, 4, 5, 16, 18, and further in view of U.S. patent 5,077,665 to Silverman et al.

Miller et al teach the invention as described above but do not teach encrypting the “bandwidth securitization instrument”. Encryption taught in a similar system is taught

in Silverman et al. See col 6 line 15.

It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided Miller et al with a means for encrypting the bandwidth securitization instrument in light of the teachings of Silverman in order to provide a means for having a secure bandwidth auction.

6. Claims 6 and 21 - 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten to include the limitations of the base claim and any intervening claims.

#### **Remarks**

7. The examiner notes that applicant, as currently a Pro-Se, is invited to conduct an interview with the examiner at applicants convenience to discuss this action. Further, it is noted applicant may desire to swear behind the Miller et al reference, at their discretion, in view of the fact that Miller et al's filing date differs from applicants earliest priority date by only two months.

Applicant is requested to provide the examiner with the IDS mailed 7/30/01, as the examiner cannot locate a copy of it.

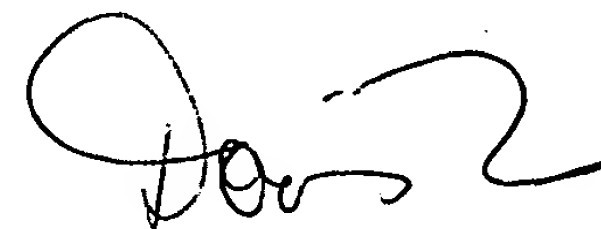
The examiner has relied on the definition of "bandwidth securitization instrument", an important definition in this case, on page 44 lines 18+, page 38 lines 13+, and page 56 line 18.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Blount whose telephone number is 571-272-3071. The examiner can normally be reached on M-F 9:00 - 5:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Doris To, can be reached on 571 – 272 - 7629. The fax phone number for the organization where this application or proceeding is assigned is

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DORIS H. TO  
SUPERVISORY PATENT EXAMINER  
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SB



11/6/06